



**FEDERAL ELECTION COMMISSION**  
WASHINGTON, D C 20463

**Virgil Poe, Treasurer  
Poe for Congress  
P O Box 14222  
Humble, TX 77347**

**OCT 26 2007**

**RE MUR 5947  
Poe for Congress and Virgil Poe,  
in his official capacity as treasurer**

**Dear Mr Poe**

**In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting Poe for Congress f/k/a Ted Poe for Congress (the "Committee") and you, in your official capacity as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended (the "Act") On October 23, 2007, the Commission found reason to believe that the Committee and you, in your official capacity as treasurer, violated 2 U S C § 434(b), a provision of the Act The Final Audit Report of the Ted Poe for Congress Committee, which is dated August 9, 2007, serves as the Factual and Legal Analysis**

**We have also enclosed a brief description of the Commission's procedures for handling possible violations of the Act In addition, please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter See 18 U S C § 1519 In the meantime, this matter will remain confidential in accordance with 2 U S C §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public**

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If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed Designation of Counsel form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission

We look forward to your response

Sincerely,



Robert D Lenhard  
Chairman

**Enclosures**

Factual and Legal Analysis

Procedures

Designation of Counsel Form

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## **Report of the Audit Division on Ted Poe for Congress**

November 6, 2003 – December 31, 2004

### **Why the Audit Was Done**

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.<sup>1</sup> The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

### **Future Action**

The Commission may initiate an enforcement action, at a later time, with respect to any of the matters discussed in this report.

### **About the Campaign (p 2)**

Ted Poe for Congress (TPC) is the principal campaign committee for Ted Poe, Republican candidate for the U S House of Representatives from the state of Texas, 2<sup>nd</sup> district. TPC is headquartered in Humble, Texas. For more information, see chart on the Campaign Organization, p 2.

### **Financial Activity (p 2)**

• <b>Receipts</b>	
○ Contributions from Individuals	\$ 1,128,834
○ Contributions from Political Committees	441,086
○ Transfers from Authorized Committees	196,789
○ Offsets to Operating Expenditures	328
○ <b>Total Receipts</b>	<b>\$ 1,767,037</b>
• <b>Disbursements</b>	
○ Operating Expenditures	\$ 1,703,187
○ Contribution Refunds	6,050
○ <b>Total Disbursements</b>	<b>\$ 1,709,237</b>

### **Findings and Recommendations (p 3)**

- Misstatement of Financial Activity (Finding 1)
- Disclosure of Proceeds from Joint Fundraising Activity (Finding 2)
- Documentation for Receipts (Finding 3)
- Disclosure of Occupation/Name of Employer (Finding 4)

<sup>1</sup> 2 USC §438(b)

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## **Part I Background**

### **Authority for Audit**

This report is based on an audit of Ted Poe for Congress (TPC),<sup>2</sup> undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 2 U.S.C. §438(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 2 U.S.C. §434. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 2 U.S.C. §438(b).

### **Scope of Audit**

This audit examined

- 1 The receipt of excessive contributions and loans
- 2 The receipt of contributions from prohibited sources
- 3 The disclosure of contributions received
- 4 The disclosure of disbursements, debts and obligations
- 5 The consistency between reported figures and bank records
- 6 The completeness of records
- 7 Other committee operations necessary to the review

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<sup>2</sup> Effective February 11, 2005, Ted Poe for Congress changed its name to Poe for Congress.

## Part II

### Overview of Campaign

#### Campaign Organization

<b>Important Dates</b>	<b>Ted Poe for Congress</b>
• Date of Registration	November 17, 2003
• Audit Coverage	November 6, 2003 - December 31, 2004
<b>Headquarters</b>	Humble, TX
<b>Bank Information</b>	
• Bank Depositories	One
• Bank Account	One Checking
<b>Treasurer</b>	
• Treasurer When Audit Was Conducted	Virgil Poe
• Treasurer During Period Covered by Audit	Virgil Poe
<b>Management Information</b>	
• Attended FEC Campaign Finance Seminar	No
• Used Commonly Available Campaign Management Software Package	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Campaign Staff

#### Overview of Financial Activity (Audited Amounts)

<b>Cash on hand @ November 6, 2003</b>	<b>\$ 0</b>
o Contributions from Individuals	\$ 1,128,834
o Contributions from Political Committees	441,086
o Transfers from Authorized Committees	196,789
o Offsets to Operating Expenditures	328
<b>Total Receipts</b>	<b>\$ 1,767,037</b>
o Operating Expenditures	\$ 1,703,187
o Contribution Refunds	6,050
<b>Total Disbursements</b>	<b>\$ 1,709,237</b>
<b>Cash on hand @ December 31, 2004</b>	<b>\$57,800</b>

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## Part III

### Summaries

### Findings and Recommendations

#### **Finding 1. Misstatement of Financial Activity**

A comparison of TPC's reported figures to bank records revealed that TPC had materially misstated receipts, disbursements, and the ending cash on hand balances for calendar years 2003 and 2004. The Audit staff recommended that TPC file amended reports to correct the misstatements. In response, TPC materially corrected the misstatements. (For more detail, see p. 4)

#### **Finding 2. Disclosure of Proceeds from Joint Fundraising Activity**

TPC did not properly disclose the receipt of net proceeds from joint fundraising activity with the 2004 Joint Candidate Committee II and the Team Texas Committee. The Audit staff recommended that TPC file amended reports to correctly disclose these receipts. In response, TPC filed amended reports materially correcting the disclosure of the joint fundraising proceeds. (For more detail, see p. 6)

#### **Finding 3. Documentation for Receipts**

The Audit staff reviewed contributions from individuals and determined that 19% were not properly documented. The errors were all associated with contributions in excess of \$50 for which a copy of the contributor's check was not retained by TPC. The Audit staff recommended that TPC provide any additional records that it is able to locate and provide any other relevant information.

In response, TPC's counsel stated that its bank keeps copies of contributor checks received by the committee, which complies with 11 CFR §102.9(a)(4). TPC also provided several contributor check copies it had recently obtained from its bank as samples, but did not provide the majority of the missing records. The Commission voted to receive this finding, without any determination on the merits of the analysis, or the facts, or the interpretation of the law contained therein. (For more detail, see p. 7)

#### **Finding 4. Disclosure of Occupation/Name of Employer**

TPC did not adequately disclose the occupation and/or name of employer for approximately 40% of contributions from individuals itemized on its disclosure reports and no "best efforts" to obtain, maintain, and submit the information was documented. The Audit staff recommended that TPC provide evidence that it exercised "best efforts" to obtain the missing information, attempt to contact the contributors to obtain the necessary information, submit evidence of such efforts and disclose any information received in amended reports. In response, TPC filed amended reports that materially disclosed occupation/name of employer information. (For more detail, see p. 8)

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## Part IV

# Findings and Recommendations

### Finding 1. Misstatement of Financial Activity

#### Summary

A comparison of TPC's reported figures to bank records revealed that TPC had materially misstated receipts, disbursements, and the ending cash on hand balances for calendar years 2003 and 2004. The Audit staff recommended that TPC file amended reports to correct the misstatements. In response, TPC materially corrected the misstatements.

#### Legal Standard

**Contents of Reports.** Each report must disclose:

- The amount of cash on hand at the beginning and end of the reporting period,
- The total amount of receipts for the reporting period and for the calendar year,
- The total amount of disbursements for the reporting period and for the calendar year, and
- Certain transactions that require itemization on Schedule A (Itemized Receipts) or Schedule B (Itemized Disbursements) 2 U S C §434(b)(1), (2), (3), (4) and (5)

#### Facts and Analysis

The Audit staff reconciled TPC's reported activity to the bank records and determined there was a misstatement of cash on hand, receipts, and disbursements for calendar years 2003 and 2004. The following charts details the discrepancies for each year. Succeeding paragraphs explain, to the extent possible, why the discrepancies occurred.

2003 Activity			
	Reported	Bank Records	Discrepancy
Opening Cash Balance @ November 6, 2003	\$0	\$0	\$0
Receipts	\$106,260	\$101,260	\$5,000 Overstated
Disbursements	\$22,856	\$24,086	\$1,230 Understated
Ending Cash Balance @ December 31, 2003	\$83,404	\$77,174	\$6,230 Overstated

The overstatement of receipts was the result of the following:

- |  |                |
|--|----------------|
| • Reported contribution from a political committee was returned from the bank for insufficient funds (December 2003) | \$5,000        |
| Overstatement  | <u>\$5,000</u> |

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The understatement of disbursements was the net result of the following

• Net under reporting of payroll disbursements <sup>1</sup>	\$1,142
• Unreported bank fees	90
• Over reported disbursement	<u>(2)</u>
Net understatement	\$1,230

The overstatement of ending cash on hand in the amount of \$6,230 was the result of the misstatements noted above

2004 Activity			
	Reported	Bank Records	Discrepancy
Opening Cash Balance @ January 1, 2004	\$83,404	\$77,174	\$6,230 Overstated
Receipts	\$1,565,264	\$1,665,777	\$100,513 Understated
Disbursements	\$1,500,011	\$1,685,151	\$185,140 Understated
Ending Cash Balance @ December 31, 2004	\$148,657	\$57,800	\$90,857 Overstated

The understatement of receipts was the result of the following

• Contributions from individuals not reported	\$84,397
• Net under reporting of contributions from political committees	15,115
• Unexplained difference	<u>1,000</u>
Understatement	\$100,513

The understatement of disbursements was the net result of the following

• Operating expenditures not reported	\$316,621
• Operating expenditures reported twice	(71,738)
• Operating expenditures reported but not located in bank records	(43,800)
• Reported \$15,000 disbursement as \$1,500	13,500
• Unexplained difference	<u>(29,443)</u>
Net understatement	\$185,140

The overstatement of ending cash on hand in the amount of \$90,857 was the result of the misstatements noted above

At the exit conference, the Audit staff provided TPC representatives with schedules detailing these misstatements. TPC representatives offered no comments.

<sup>1</sup> TPC failed to report six payroll disbursements totaling \$12,219 while it reported five payroll-related disbursements totaling \$11,076 that could not be traced to bank records.

### **Interim Audit Report Recommendation and Committee Response**

The Audit staff recommended that TPC file amended reports for calendar years 2003 and 2004. It was further recommended that the most recent report be amended to show the adjusted cash on hand balance along with an explanation that it resulted from audit adjustments from a prior period. In response, TPC filed the recommended amended reports.

## **Finding 2. Disclosure of Proceeds from Joint Fundraising Activity**

### **Summary**

TPC did not properly disclose the receipt of net proceeds from joint fundraising activity with the 2004 Joint Candidate Committee II and the Team Texas Committee. The Audit staff recommended that TPC file amended reports to correctly disclose these receipts. In response, TPC filed amended reports materially correcting the disclosure of the joint fundraising proceeds.

### **Legal Standard**

**Itemization of Contributions from Joint Fundraising Efforts.** Participating political committees must report joint fundraising proceeds in accordance with 11 CFR 102.17(c)(8) when such funds are received from the fundraising representative. 11 CFR §102.17(c)(3)(iii).

Each participating political committee reports its share of the net proceeds as a transfer-in from the fundraising representative and must also file a memo Schedule A (Itemized Receipts) itemizing its share of gross receipts as contributions from the original contributors to the extent required under 11 CFR 104.3(a). 11 CFR §102.17(c)(8)(i)(B).

### **Facts and Analysis**

The Audit staff determined that TPC received a total of \$196,789 in net proceeds from joint fundraising activity, \$100,782 from the 2004 Joint Candidate Committee II and \$96,007 from the Team Texas Committee. This activity was properly itemized as transfers-in from the fundraising representative on Schedules A, however, TPC did not disclose memo entries on Schedules A itemizing its share of the gross receipts as contributions from the original contributors. This information was contained in TPC's contributions database.

At the exit conference, the Audit staff discussed this matter with TPC representatives. TPC representatives offered no comments.

### **Interim Audit Report Recommendation and Committee Response**

The Audit staff recommended that TPC file amended reports to include memo entries on Schedules A itemizing its share of the gross receipts from the joint fundraising activity as contributions from the original contributors. In response, TPC filed the recommended amended reports. TPC stated in its response that it had followed the reporting

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instructions provided by the joint fundraising representatives TPC also noted that the proceeds received from joint fundraising activity referenced above were originally itemized as transfers-in from the fundraising representatives

### **Finding 3. Documentation for Receipts**

#### **Summary**

The Audit staff reviewed contributions from individuals and determined that 19% were not properly documented. The errors were all associated with contributions in excess of \$50 for which a copy of the contributor's check was not retained by TPC. The Audit staff recommended that TPC provide any additional records that it is able to locate and provide any other relevant information.

In response, TPC's counsel stated that its bank keeps copies of contributor checks received by the committee, which complies with 11 CFR §102.9(a)(4). TPC also provided several contributor check copies it had recently obtained from its bank as samples, but did not provide the majority of the missing records. The Commission voted to receive this finding, without any determination on the merits of the analysis, or the facts, or the interpretation of the law contained therein.

#### **Legal Standard**

**A. Retention of Check Copies.** For contributions in excess of \$50, committees must maintain a photocopy or digital image of the check or written instrument. If the check copies are maintained digitally, the committee must provide the ability to retrieve and read the images at no cost to the Commission. 11 CFR §102.9(a)(4).

**B. Preserving Documents.** Committees must preserve these records for 3 years after a report is filed. 2 U.S.C. §432(d).

#### **Facts and Analysis**

The Audit staff reviewed contributions from individuals on a sample basis and determined that approximately 19% of these items were not properly documented. The only documentation available for these contributions was the entries in TPC's electronic database. The errors were for contributions greater than \$50 for which there was no copy of the check or written instrument.

The Audit staff presented this matter to TPC representatives at the exit conference. TPC representatives indicated that they would attempt to obtain the necessary documentation and provide it to the Audit staff.

#### **Interim Audit Report Recommendation and Committee Response**

The Audit staff recommended that TPC provide any additional records that it was able to locate and any other relevant information. In response, TPC's counsel stated that its bank, acting as "an agent authorized by the treasurer," keeps copies of contributor checks received by the committee, and TPC is therefore in compliance with 11 CFR §102.9(a)(4). Also included in the response, were several contributor check copies TPC

had recently obtained from its bank as samples. TPC did not provide copies of the majority of the contribution checks that were missing and none of those provided were among the sample errors. The Commission voted to receive this finding, without any determination on the merits of the analysis, or the facts, or the interpretation of the law contained therein.

#### **Finding 4. Disclosure of Occupation/Name of Employer**

##### **Summary**

TPC did not adequately disclose the occupation and/or name of employer for approximately 40% of contributions from individuals itemized on its disclosure reports and no "best efforts" to obtain, maintain, and submit the information was documented. The Audit staff recommended that TPC provide evidence that it exercised "best efforts" to obtain the missing information, attempt to contact the contributors to obtain the necessary information, submit evidence of such efforts and disclose any information received in amended reports. In response, TPC filed amended reports that materially disclosed occupation/name of employer information.

##### **Legal Standard**

**A. Required Information for Contributions from Individuals.** For each itemized contribution from an individual, the committee must provide the following information:

- The contributor's full name and address (including zip code),
- The contributor's occupation and the name of his or her employer,
- The date of receipt (the date the committee received the contribution),
- The amount of the contribution, and
- The election cycle-to-date total of all contributions from the same individual. 2 U S C §434(b)(3)(A) and 11 CFR §§100.12 and 104.3(a)(4)

**B. Best Efforts Ensures Compliance.** When the treasurer of a political committee shows that the committee used best efforts (see below) to obtain, maintain, and submit the information required by the Act, the committee's reports and records will be considered in compliance with the Act. 2 U S C §432(i)

**C. Definition of Best Efforts.** The treasurer and the committee will be considered to have used "best efforts" if the committee satisfied all of the following criteria:

- All written solicitations for contributions included
  - A clear request for the contributor's full name, mailing address, occupation, and name of employer, and
  - The statement that such reporting is required by Federal law
- Within 30 days after the receipt of the contribution not accompanied by complete information, the treasurer made at least one effort to obtain the missing information, via either a written request or a documented oral request
- The treasurer reported any contributor information that, although not initially provided by the contributor, was obtained in a follow-up communication or was

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contained in the committee's records or in prior reports that the committee filed during the same two-year election cycle 11 CFR §104.7(b)

### **Facts and Analysis**

A sample review of contributions from individuals disclosed on Schedules A (Itemized Receipts) indicated that TPC failed to disclose the occupation and/or name of employer, for approximately 40% of the tested contributions. In some instances, the missing information was maintained in TPC's records. For those contributors for whom the information was not in TPC's records, no evidence was available to demonstrate that TPC had exercised "best efforts" to obtain, maintain, and submit the information.

The Audit staff presented this matter to TPC representatives at the exit conference. TPC representatives asked the best way to comply with this recommendation. The Audit staff responded that TPC should provide evidence of its best efforts to obtain, maintain and submit the missing contributor information, contact the contributors in an attempt to obtain this information, and, file amended reports for any information it obtains or already has in its possession.

### **Interim Audit Report Recommendation and Committee Response**

The Audit staff recommended that TPC take the following action:

- Provide documentation that it exercised best efforts to obtain, maintain and submit the required contributor information, or
- Make an effort to contact those individuals for whom the required information was not in TPC files and provide documentation of such efforts (such as copies of letters to the contributors and/or phone logs), and,
- File amended reports to disclose any information in TPC's possession as well as information obtained in response to this recommendation.

In response, TPC filed amended reports that materially disclosed occupation/name of employer information.

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